
PECFA UPDATE # 24

PLEASE POST
AUGUST 2006

Comm 47 USUAL & CUSTOMARY COST SCHEDULE CLARIFICATIONS

Changes to Wisconsin Administrative Code Chapter Comm 47 became effective on May 1, 2006. A little over three months have elapsed since the changes went into effect. During this time the PECFA Bureau has received various questions regarding the U & C cost schedule (Comm 47.325 - Usual and customary costs).

The purpose of this update is to provide some clarification regarding a couple of the more significant U & C topics.

1. Do occurrences, for which DNR notification was made prior to May 1, 2006, have to use the U & C schedule?

Yes. All occurrences must follow Comm 47.325, except as noted below.

- *As stated in section Comm 47.325 (1), the U&C criteria apply to all work covered under Chapter Comm 47, for all occurrences previously or newly reported to the DNR, that is performed after May 1, 2006, with the following exceptions:*
 - i. *Work for which a reimbursement cap has been determined through the competitive public bidding process established under s. 101.143 (3) (cp), Stats.*
 - ii. *Work performed as part of an emergency action, within the initial 72 hours after the onset of the need for the action.*
 - iii. *Work performed for home oil tank systems.*

Note: If you have a cost cap that was not established through the competitive bidding process, you still must follow the Usual & Customary cost schedule for work performed after May 1, 2006; these caps would include \$60K or \$80K notifications, and all other remedial caps established based on time and materials. If you are unsure whether the U & C applies, please contact the PECFA office.

The Department strongly encourages all parties impacted by the revised Comm 47 rule to read the entire rule. For those that prefer to focus on the U & C schedule, the following sections are particularly relevant: Comm 47.325 (1), (4) and (6).

Additional information regarding this topic can be found under the Frequently Asked Questions page, specifically FAQ's 87 and 93a, at: <http://commerce.wi.gov/ERpdf/pecfa/ER-PECFA-FAQs1.pdf>

2. With respect to the U & C Standardized Invoice, does the entire Standardized Invoice have to be submitted, even when there may be, for example, only 2 or 3 tasks that actually apply?

No. It is O.K. to cut and paste tasks, however, the standardized invoice header format and content must remain intact.

You may download and print a copy of Comm 47 from the Wisconsin State Legislature, Revisor of Statutes Bureau Web page at: <http://www.legis.state.wi.us/rsb/code.htm>

You may also obtain copies of the code by contacting Document Sales and Distribution at (800)-362-7253 or (608)-266-3358.

Also, the Department would like to know how many individuals and companies would be interested in attending another round of training sessions that would focus on specific topics in the revised rules. Please let us know your thoughts by sending an e-mail to James Moser at <mailto:jmoser@commerce.state.wi.us>

And, as always, you can contact James Moser at 608-267-1394 for questions regarding the U & C schedule.

Costs not eligible if required occurrence classification not completed

For all occurrences that had reported a release to the DNR by May 1st, 2006, an occurrence classification form was required to be submitted to the Department no later than May 31, 2006, per Comm 47.325(4)(a), except for:

- Occurrences with a bid cap previously set through the public bidding process
- Home heating oil tanks
- Occurrences with conditional closure

On June 23rd letters were sent to 377 responsible parties reminding them an occurrence classification had not been completed. **If you are currently doing any work on a PECFA occurrence where the DNR notification date was prior to May 1, 2006 and you have not completed an occurrence classification form, all costs incurred including bank interest are not eligible for reimbursement, per Comm 47.325(4)(b).** Reimbursement of costs will be available again once the Department receives the completed occurrence classification form.

Please note existing occurrences that were already in the PECFA program prior to May 1, 2006 are not exempt from this process unless it meets one of the above criteria.

A copy of the letter dated June 23rd, and a list of occurrences that were sent this letter is available on the PECFA web site at:

<http://commerce.wi.gov/ERpdf/pecfa/ER-PECFA-OccurrenceClassification-ListOf-C-Sites.pdf>

Public Bid Deferment Letter-Approval for Usual & Customary Costs Only

On June 12th, 2006 letters were sent to responsible parties indicating their site was being deferred from the public bidding process at this time. The occurrences receiving these letters were determined from the scores submitted on the occurrence classification form. The letter indicated approval to perform work under an existing cost cap, (not previously established through the public bidding process) using the Usual & Customary cost schedule only; this cap cannot be exceeded. **If total costs to remediate this site exceed \$60,000, it may be subject to public bidding. Commerce will contact responsible parties in the future if their site is to be bid.**

Only costs less than or equal to the Cost Schedule will be considered eligible for PECFA reimbursement. In addition, if the cost cap includes activities that are not on the Cost Schedule, costs for those activities must be pre-approved by Commerce.

A copy of the letter dated June 12th, and a list of occurrences that were sent this letter is available on the PECFA web site at:

<http://commerce.wi.gov/ERpdf/pecfa/ER-PECFA-OccurrenceClassification-ListOf-B-Sites.pdf>

PENALIZED INELIGIBLES

Effective May 1, 2006, Comm 47 includes section 47.30(3) a list of Penalized ineligible costs. If these costs are submitted in claims after May 1, 2006, a 50% penalty will be applied. PECFA will allow a window of time to remove these costs from any claims that have been submitted since May 1, 2006. If you know you have submitted some of these costs you may submit a letter requesting PECFA to remove them from the claim when it is reviewed for reimbursement. When submitting this request you must be sure to include all site information and list the invoices and amount to be removed for each. You must also submit a revised Form 1 with the new amount being claimed. Please understand that this list of Penalized ineligible costs was developed from the list of costs that have not been eligible for several years, but we continued to see them being submitted in the PECFA claims. If the costs are not removed before the claim is audited, the claim reviewers, for a limited time, may give you the opportunity to remove the costs before finalizing their audit.